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DASAGROUP HOLDINGS CORP.
d/b/a KICKHASS AVOCADOS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JEFFERIES FUNDING, LLC,

Plaintiff,

v.

DASAGROUP HOLDINGS CORP. (d/b/a
KICKHASS AVOCADOS) and LONDON
FRUIT, INC.,

Defendants.

Case No. 3:24-cv-05639-SK

**DEFENDANT DASAGROUP
HOLDINGS CORP. (d/b/a KICKHASS
AVOCADOS)'S FIRST AMENDED
THIRD-PARTY COMPLAINT
AGAINST SILO TECHNOLOGIES,
INC.**

JURY TRIAL DEMANDED

DASAGROUP HOLDINGS CORP. (d/b/a
KICKHASS AVOCADOS),

Counter- and Cross-Claimant,

v.

JEFFERIES FUNDING, LLC,

Counter-Defendant,

and LONDON FRUIT, INC.,

Cross-Defendant.

DEFENDANT DASAGROUP HOLDING CORP.'S FIRST AM. THIRD-PARTY COMPLAINT

DASAGROUP HOLDINGS CORP. (d/b/a
KICKHASS AVOCADOS),

Defendant/Third-Party Plaintiff,

v.

SILO TECHNOLOGIES, INC.,

Third-Party Defendant.

Pursuant to Federal Rule of Civil Procedure 14(a)(1), Defendant Dasagroup Holdings, Inc. d/b/a Kickhass Avocados (“Defendant” or “Dasagroup” or “Kickhass” as appropriate by context¹) hereby asserts the following First Amended Third-Party complaint against third-party defendant Silo Technologies, Inc. (“Silo”).

PARTIES

1. Defendant and Third-Party Claimant Dasagroup Holdings Corp. dba Kickhass Avocados (“Defendant” or “Dasagroup” or “Kickhass”) is a Washington corporation with its principal place of business in Shoreline, Washington.

2. Plaintiff Jefferies Funding LLC (“Plaintiff”) is a Delaware limited liability company with its principal place of business in New York, New York.

3. Co-defendant London Fruit, Inc. (“Co-Defendant”) is a Texas corporation (now known as London Fruit, LLC, a Texas limited liability company). On information and belief, its principal place of business is San Francisco, California.

4. Third-Party Defendant Silo Technologies, Inc. (“Silo”) is a Delaware corporation registered to do business in California, with its principal place of business in San Francisco, California.

JURISDICTION

¹ In its complaint, Plaintiff refers to Dasagroup by its trade name “Kickhass,” while Defendant’s pleadings use the corporate name “Dasagroup.”

1 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1367.
2 Diversity of citizenship exists between the parties; the amount in controversy exceeds \$75,000;
3 and this third-party claim asserted are also within the supplemental jurisdiction of this Honorable
4 Court.

5 6. Venue in this District is proper under 28 U.S.C. § 1391 because a substantial part
6 of the events giving rise to the complaint occurred in this District. Moreover, assignment to the
7 San Francisco Division is appropriate under Civil Local Rule 3-2(d) because a substantial part of
8 the events giving rise to the claims occurred in San Francisco County, California, where, upon
9 information and belief, Third-Party Defendant Silo Technologies maintains its principal place of
10 business in San Francisco, California.

11 7. Pursuant to the choice of law provision in the parties' Master Services Agreement
(at 42), California law governs the parties' rights and obligations in this matter.

12 GENERAL ALLEGATIONS

13 8. Kickhass buys and sells wholesale quantities of perishable agricultural
14 commodities, to wit, avocados in interstate and/or foreign commerce.

15 A. The Purveyance of Perishable Agricultural Goods Is a Time-Sensitive, Critical 16 Business for the Country's Food Supply, Which is Why Congress Enacted the 17 Perishable Agricultural Commodities Act of 1930.

18 9. Kickhass trades in fresh fruit commodities the United States Department of
19 Agriculture ("USDA") expressly recognize as commodities covered under the provisions of the
20 Perishable Agricultural Commodities Act, 1930, *as amended*, 7 U.S.C. §§ 499a-499t ("PACA").
21 PACA was enacted in 1930 "to facilitate the free flow of perishable agricultural commodities in
22 interstate commerce by regulating that commerce through the licensing of commission
23 merchants, dealers and brokers engaged in it and the prohibiting of various kinds of unfair
24 conduct. . . ." *Rothenberg v. H. Rothstein & Sons*, 183 F.2d 524, 526 (3d Cir. 1950). This
25 purpose included efforts to "eliminate unfair practices in the marketing of perishable agricultural
26 commodities in interstate commerce in the case of a declining market by making it difficult for
27 unscrupulous persons to take advantage of shippers by wrongful rejection of the goods upon
28 arrival at a point where it is expensive and impracticable for the shipper to enforce his legal
rights." *See LeRoy Dyal Co. v. Allen*, 161 F.2d 152, 156 (4th Cir. 1947).

1 10. The statute “was amended in 1984 to provide unique credit protection to sellers of
2 perishable agricultural commodities,” who, Congress found, “had a need to move their
3 inventories quickly” and “were often required to become unsecured creditors of their purchasers,
4 whose credit they were often unable to verify.” *Nickey Gregory Co., LLC v. AgriCap, LLC*, 597
5 F.3d 591, 594 (4th Cir. 2010). To avoid this problem and to ensure that sellers of produce were
6 actually paid for what they sell, the 1984 amendments impressed a statutory trust on perishable
7 commodities and their proceeds for the benefit of unpaid sellers. *See* 7 U.S.C. § 499e(c)(2)
8 (imposing a statutory trust over any goods, receivables, or proceeds from perishable agricultural
9 commodities until full payment is made). In clear, unmistakable language contained in the
10 statutory text, these amendments expressly stated that Congress found secured financing
11 arrangements that encumber “food” and “any receivables of proceeds from the sale of such
commodities” to be “contrary to the public interest”:

12 It is hereby found that a burden on commerce in perishable agricultural
13 commodities is caused by financing arrangements under which
14 commission merchants, dealers, or brokers, who have not made payment
15 for perishable agricultural commodities purchased, contracted to be
16 purchased, or otherwise handled by them on behalf of another person,
17 encumber or give lenders a security interest in, such commodities, or on
18 inventories of food or other products derived from such commodities, and
any receivables or proceeds from the sale of such commodities or
products, and that such arrangements are contrary to the public interest.
This subsection is intended to remedy such burden on commerce in
perishable agricultural commodities and to protect the public interest.

19 7 U.S.C. § 499e(c)(1).

20 11. As one member of Congress noted during subcommittee hearings of the House
21 Committee on Agriculture that reviewed the 1984 amendments to PACA , “Sound credit, fair
22 trade practices, and a reliable payment performance are essential to the health of the entire
23 industry.” Recommendations to Improve the Perishable Agricultural Commodities Act: Hearing
24 Before the Subcomm. on Domestic Marketing, Consumer Relations and Nutrition, 98 Cong. 2
25 (1991) (opening remarks of Rep. L. Panetta). While “PACA has minimized many interruptions
26 in the marketing of perishables,” “under current law [i.e., pre-1984 law], in the case of slow pay
27 or nonpay, sellers of fruits and vegetables are treated as unsecured creditors, which means they
28 get little protection in the event of [a] financial claim against buyers.” *Id.* The creation of a

1 statutory trust was intended to remedy this. The subcommittee also recognized that another
2 purpose of the 1984 amendments was to cure onerous factoring arrangements that compounded
3 the risk of sellers of produce when their buyers failed to pay or became insolvent:

4 Produce, under accounts receivable, is often assigned to [a] lender without any
5 guarantee that the seller will recover more than a small amount of the value of his
6 produce,” and “[c]onsequently, the financial position of sellers is extremely
7 vulnerable vis-a-vis collecting on the debt when [a] buyer becomes insolvent.

8 *Id.*

9 12. For this reason, in enacting PACA, Congress has made a clear choice that the
10 rights of agricultural growers are to be given priority over the rights of secured lenders via the
11 PACA trust. *See S & H Packing & Sales Co. v. Tanimura Distrib.*, 883 F.3d 797, 813 (9th Cir.
12 2018). As one federal appellate court has aptly observed, because “sellers of perishable
13 commodities increasingly suffered the risk of the uncollectability of amounts owed by the
14 purchasers, especially because the purchasers gave superior security interests to their lenders,
15 Congress enacted the 1984 amendments to protect the commodities sellers by giving them a
16 priority position over even secured creditors.”

17 **B. Silo and Its Powerful Backers in the Venture Capital and Private-Credit**
18 **Industries Moved Fast to Deploy Private Capital Via Short-Term Loans to**
19 **Sellers of Perishable Produce Like Dasagroup.**

20 13. Third-Party Defendant Silo Technologies, Inc. (“Silo”), the alleged predecessor in
21 interest of Plaintiff Jeffries on the debt that is the subject of its lawsuit, was a Delaware
22 corporation registered to do business in California with its principal place of business in San
23 Francisco, California. Silo is a venture-backed start up company that was originally founded in
24 2018 as “a technology-driven marketplace that uses AI to streamline supply chains for perishable
25 agribusiness.”² As originally envisioned, “Silo’s AI and machine learning technology” would
26 “adapt[] to existing workflows, seamlessly automating the entire supply chain from harvest
27 management, to forecasting and negotiation, through QC and logistics.” *Id.* By mid-2019, the
28 company announced a \$3 million seed round of financing by heavy-hitters in the venture capital
industry.

² Press Release: *Silo Lands \$3 Million Seed Round to Bring Wholesale, Perishable Agriculture Online* (May 23, 2019)

1 14. By 2020, the company had received backing from prominent VC firm Andreessen
2 Horowitz. In describing its investment in Silo, one of the firm’s general partners described the
3 company in effusive terms, specifically with respect to the promise it held to promote what
4 appears to be more partnerships and better vertical integration of the perishable produce industry,
5 the downstream logistics industry, and potential future partnerships with private capital:

6 [T]he agriculture industry . . . has largely remained unchanged by technology,
7 despite being the largest category of consumer spend, the presence of massive
8 waste (40 percent of perishable food is wasted in the supply chain), and a renewed
9 focus on having a resilient food supply chain in a post-COVID era. *Food*
10 *distributors are at the heart of this supply chain — they are responsible for*
11 *connecting growers, grocers, restaurants, and even other distributors. And this*
12 *dense network of relationships requires a high degree of operational and*
13 *logistical excellence, as fresh food begins losing value the moment it enters the*
14 *supply chain. [¶]*

15 That’s why we were so excited when we met . . . the founders of Silo: an
16 operating system and system of record for wholesale food distributors that is
17 reducing waste, improving margins, and catalyzing an historic shift from pencil
18 and paper (really) to software. The product has exceptionally strong market fit
19 because it solves so many of the operational problems that distributors have. Price
20 sheets, inventory, purchase orders, logistics, and even accounting is all handled on
21 the Silo platform . . . [¶] *Silo is a “system of record” for wholesale food*
22 *predicated on partnering with and supporting existing distributors, instead of*
23 *competing with or otherwise “disrupting” them. As a result, there is a strong*
24 *network emerging, which Silo’s technology aims to assist in driving further*
25 *reductions in spoilage and increasing profits for all participants within the*
26 *supply chain. We believe that financial services will be a key enabler of this*
27 *ecosystem, where factoring and faster payments, coupled with laws like PACA,*
28 *can solve many of the cashflow challenges that growers and distributors face.*³

15. That vision appears to have come to fruition. In 2022, Silo proudly announced
that it had secured a \$100 million lending commitment from Plaintiff Jefferies to fund Silo’s
Instant Pay Program, which would provide short-term capital to purveyors of agricultural
commodities who use Silo’s platform.⁴ By 2023, logistics and supply-chain management had
become a magnet for even more private VC funding, as private investors hoping to find the next

³ Andreessen Horowitz Blog: *Investing in Silo* (Sept. 24, 2020) (“Price sheets, inventory, purchase orders, logistics, and even accounting is all handled on the Silo platform . . . [¶] We believe that financial services will be a key enabler of this ecosystem, where factoring and faster payments, coupled with laws like PACA, can solve many of the cashflow challenges that growers and distributors face.”).

⁴ Silo Blog post: *Silo Enters into Financing with Jefferies to Help More Produce Suppliers and Distributors Unlock the Cash Flow Needed to Thrive* (announcement as of June 30, 2022).

1 “unicorn” company, poured money into logistics startups.⁵ Silo was one of these private
2 equity-backed logistics start-ups that benefited from this influx of capital, and it was touted in
3 Forbes as having unicorn potential. In July 2023, Silo announced that it had received \$132
4 million of even more new capital in the form of an additional \$100 million lending facility from
5 First Citizens bank, in addition to a \$32 million Series C round of investment led by Koch
6 Disruptive Technologies, a subsidiary of Koch Industries, a global leader in supply chain
7 logistics.⁶

8 16. Unbeknownst to Dasagroup and other participants in Silo’s Instant Pay Program,
9 the loans provided by Silo in exchange for their factored receivables were funded by Silo’s
10 financier Jefferies, and not Silo itself. Dasagroup was also unaware that (i) Silo was an
11 unlicensed lender with respect to the Instant Pay Program and (ii) Jefferies was a silent lender
12 whose parent company, Jefferies Financial Group, was a conflicted investor in Silo. Only
13 recently, Dasagroup has come to learn that the money that was paid to Dasagroup as part of the
14 factoring arrangement originated from Jefferies, whose ultimate parent, Jefferies Financial
15 Group, was owned in part by Blackrock, Inc., a private equity firm that was a key financier of
16 Silo’s most direct competitor in the AI ag-tech space, Grubmarket, Inc. Dasagroup was
17 completely unaware of this this conflict of interest — i.e., that Jefferies it was extending credit to
18 Silo while its parent company’s 7.5% owner, Blackrock (the *largest or second-largest*
19 *shareholder* in Jefferies Financial at the time), had a considerable ownership stake in Grubmarket
20 via at least two rounds of disclosed Series D and Series E investments. This is significant when
21 Dasagroup made so much of its sensitive commercial data available to Silo through its Instant
22 Pay Program as per a borrower’s expectation of confidentiality and good faith with its lender. It
23 is also significant because, as described *infra*, Grubmarket eventually came to purchase
24 Dasagroup’s largest customer, defendant London Fruit, which was originally a Texas-based
25 produce distributor, at a time when Dasagroup was already a participant in its Instant Pay
26 Program and was continuing to factor its receivables with London Fruit through the program.

27 ⁵ TrueBridge Capital, *Trends from This Year’s New Billion Dollar Startup List*. Forbes (Aug. 15,
28 2023).

⁶ PR Newswire: *Silo Lands \$132 Million to Support the Food Supply Chain* (Jul. 12, 2023).

1 17. At no time, however, was Dasagroup informed that the credit terms, approvals,
2 repayment policies, or exercise of payment rights and obligations under the Silo Instant Pay
3 Program could be influenced by Jefferies's conflict of interest — i.e., exercised in such a way
4 that would benefit Silo's direct competitor, Grubmarket, rather than Silo itself and loyal clientele
5 like Dasagroup. Also, at no time was Dasagroup informed of the potential risks that its most
6 sensitive and critical business information it intended to share with Silo —i.e., competitive
7 intelligence about Dasagroup's pricing, suppliers, and customers — could possibly be shared
8 with a financial institution beholden to the interests of Silo's direct competitor, Grubmarket, who
9 fatefully purchased Dasagroup's largest customer, London Fruit, Inc., a Texas-based wholesaler.⁷
10 After the acquisition, for reasons explained below, London Fruit and Grubmarket began
11 stretching payments, underpaying on shipments, and later stopped paying altogether, which
12 precipitated this litigation when Dasagroup did not have the cash flow on hand to make
13 excessive payments demanded by Jefferies and Silo. Had Jefferies's status as Silo's silent lender
14 been disclosed to Dasagroup as part of the Instant Pay Program with disclosure of the potential
15 conflicts existing between Jefferies, Blackrock and Grubmarket, Dasagroup could have known
16 that Silo was susceptible to Jefferies' conflicted interests, that Jefferies had the potential to
17 suddenly disrupt Silo and Dasagroup's course of dealing, and also that Grubmarket's purchase of
18 London Fruit presented a unique business risk to Dasagroup by virtue of Dasagroup's continued
19 participation in Silo's Instant Pay program.

20 18. Although Silo originally portrayed itself as a company devoted to helping persons
21 in the agricultural supply chain — and even advertised its product a one-stop software solution
22 for financing and obtaining quotes for logistics carrier costs — it seems to have lost its way.
23 According to the complaint filed by Jefferies in this action, Silo defaulted on its secured lending
24 facility with Jefferies and entered into a forbearance arrangement with the financier on May 8,
25 2024, which was quickly followed by reports that Silo had laid off roughly 30% of its staff.⁸ The

26 ⁷ Grubmarket Press Release: *GrubMarket Acquires London Fruit to Expand Further in Texas*
27 (Aug. 3, 2023).

28 ⁸ TechCrunch, *Food supply chain software maker Silo lays off ~30% of staff amid M&A discussions* (May 22, 2024).

1 amount of money raised by the company and the amount of private capital so made available to
2 deploy to the platform's users is truly impressive and is reported to have exceeded \$272 million.⁹

3 **C. In June 2022, Dasagroup Began Factoring Certain Receivables For Its Produce**
4 **Sales Under Silo's Instant Pay Program.**

5 19. On June 6, 2022, Dasagroup and Silo executed an agreement for Dasagroup to
6 participate in Silo's Instant Pay Program. The one-page Order Form signed by the parties was
7 subject to a "Master Services Agreement" that was deemed to be "incorporated by reference" on
8 the face of the document, but that was hyperlinked to refer visitors to a differently-named
9 document online entitled the "Supplier Receivable Sales Agreement." At no time did Dasagroup
10 learn that the program was a recourse lending program or was informed that Silo was not
11 licensed to lend or broker commercial loans.

12 20. The Supplier Receivable Sales Agreement was anything but a sales agreement; in
13 substance and operation, it was nothing more than a short-term lending facility. In simple terms,
14 the Agreement, which was governed by California law, generally contemplated the following
15 arrangement: The "Supplier" (here, Dasagroup) could elect to "sell" certain receivables to Silo
16 that were owed to the Supplier by an "Obligor," but only on the condition that the Obligor had
17 been approved by Silo as an "Eligible Obligor." Supplier Receivables Agreement ("SRA") at §
18 1. If Silo made such a determination, then Silo would "offer" terms to purchase the receivables
19 in question from Supplier at a discount from their face value, but — as shown below — subject
20 to continuing obligations of Supplier to compensate Silo for any shortfall in Silo's collection
21 efforts against the Obligor.

22 21. Under the terms of the program, in exchange for the financing provided to
23 Supplier, Silo would collect the face value of the receivable subject to certain "Adjustments"
24 from Obligor ("generally" without providing notice to the Obligor of the transaction), but while
25 making no effort, and having no obligation, to undertake any "collection activities" against the
26 Obligor. *See* SRA § 5. From a collections perspective, all that Silo was contractually required to
27 do was to "direct" to Supplier where "all payments made" on the receivables should be sent.
28 Supplier, by contrast, was required to immediately inform Silo if it became aware of any grounds

⁹ Crunchbase, *Silo - Funding, Financials, Valuation & Investors* (last accessed Jan. 3, 2025).

1 on which an Obligor may not make timely payment when the receivable is due (i.e., the
2 “Maturity Date”), in addition to forwarding all collections that Supplier received on the
3 receivables to Silo.

4 22. For this right to collect receivables in its payment account, Silo would provide the
5 following terms of financing to Supplier: Supplier would receive payment of a specially-defined
6 discounted purchase price (the “**Purchase Price**”) via two “payments,” but one of which was
7 certain. The first payment — the “**Upfront Purchase Price**” (defined as “Net Face Value¹⁰
8 [NFV] minus Reduction Reserve [variable, but stated as 10% of NFV]”) — would be paid to
9 Supplier on the date of purchase. (Assuming a 10% reduction reserve as stated in the SRA,
10 Supplier would receive 90% of NFV at the time of purchase.) The second payment — the
11 “**Deferred Purchase Price**” — was more illusory; it is defined as the “Reduction Reserve” (10%
12 of NFV) “minus” a “Transaction Fee” paid by Supplier that, in the case of Dasagroup, was
13 quoted as 2% of NFV. *See* SRA § 2.

14 23. While the amount of the Deferred Purchase Price could be calculated in theory,
15 there was no commitment that the Supplier would actually be paid this amount, even on a
16 deferred basis. Instead, when the receivable came due (the “Maturity Date” of the receivable,
17 also referred to as the “Deferred Purchase Price Payment Date”), Silo’s theoretical payment of
18 the Deferred Purchase Price at maturity would be adjusted by — and potentially fully offset by
19 — what was essentially the shortfall between the face value of the receivable and actual amounts
20 collected by Silo from Obligor. *See* SRA § 3.¹¹ If Silo collected more on the receivable than
21 what it had held back as the reduction reserve, then Silo would be obligated to only pay Supplier
22 for what referred to as the “Reduction Reserve Surplus” (that quantity calculated as the

23 ¹⁰ The Net Face Value (“NFV”) of a receivable is defined as “the face amount of the Receivable,
24 net of any Adjustments (other than the Reduction Reserve) specifically taken into account in
25 determining the Purchase Price” at the time of purchase. *See* SRA § 2. Separately, an
26 “Adjustment” is defined as “any discount, adjustment, deduction, or reduction that would have
27 the effect of reducing the final amount of part or all of such Receivable (except, in each case, to
28 the extent resulting solely from an Insolvency Event of the applicable Obligor or the financial
inability of the Obligor to pay such Receivable).” *Id.* § 27.

¹¹ This calculation is more complex than stated. Under the agreement, the “Actual Reduction
Amount” is calculated as the greater of (i) all other Adjustments made to the receivable (other
than the adjustments initially considered for calculating NFV) and (ii) any “Repurchases” of the
receivable required by Section 8. *See* SRA § 3.

1 difference between the reduction reserve and the shortfall (i.e., the “Actual Reduction Amount”))
2 less another 2% Transaction Fee on the total face value of the receivable. *Id.* Alternatively, if
3 Silo collected less on the receivable from the Obligor than what it had held back as the reduction
4 reserve, then Supplier would be liable to pay Silo for that difference, which was calculated under
5 the agreement as the “Reduction Reserve Deficit,” in addition to the 2% Transaction Fee. *Id.* If
6 Supplier was unable to timely pay this Reduction Reserve Deficit — or any other amounts owed
7 to Silo under the agreement — then Supplier would be assessed “Late Fees” under Section 6 of
8 the SRA.

9 24. The Late Fees to be assessed against Supplier were as follows: (i) if any late
10 payment is received within 30 days of the Maturity Date, then the late fee would be calculated as
11 the Transaction Fee [here, 2% of NFV] plus an additional 0.5% of NFV; and (ii) if any late
12 payment is received more than 30 days after the Maturity Date, then the late fee would be
13 calculated as the Transaction Fee [here, 2% of NFV] plus an additional 1.5% of NFV. SRA § 6.¹²
14 Nothing in section 6 of the SRA (or elsewhere) indicates that these late fees were intended to be
15 anything but a penalty to the Supplier for late payment. Nothing in the SRA indicates that these
16 late fees were commercially reasonable, approximated costs difficult to estimate, or that they
17 were a reasonable estimate of actual damages caused by any late payment, much less why a
18 payment received on the 31st day after maturity warranted 1.5% on top of the transaction fee
19 (“Transaction Fee + additional 1.5%”), as opposed to a 0.5% fee charged on the same payment
20 one day earlier (“Transaction Fee + additional 0.5%”). This is especially true when the
21 “Transaction Fee” could vary between customers, on a customer-by-customer basis, and, in the
22 case of Dasagroup, was assessed at 2%, which, in and of itself, is a substantial charge that would
23 always be assessed for any payments assessed one day after the “maturity” of a factored
24 receivable (i.e., the date when payment is due to Supplier from an Obligor).

25 25. While the overall payment structure of the SRA appears to have mitigated Silo’s
26 risk of nonpayment by Obligor on the receivables at issue, nothing in the Agreement required
27 Silo to refund to Supplier any further portions of the reduction reserve or make any other
28

¹² These same Late Fee provisions were expressly incorporated into the later Forbearance Agreement with Plaintiff Jefferies, with additional provisions operating as a potential forfeiture in the event of late payment. *See* Dkt. 1 (Jefferies Compl.) at Exh. C § 4.3 (Forbearance Agmt.).

1 payments to Supplier. The document did, however, contain a separate provision that ran the
2 other way, requiring Supplier to make Silo whole in the event of further “Adjustments” to
3 Purchased Receivables by the Obligor. *See* SRA § 7. That provision stated that “[i]f . . . an
4 Obligor makes any reduction or adjustment to, or takes or retains any credit in respect of, the
5 amount of a scheduled payout in respect of a Purchased Receivable [following the Purchase
6 Date] (including any setoff, recoupment, or other fee or charge) (each, an ‘Adjustment’), the
7 Supplier will be deemed to have received on such day a Collection in respect of that Purchased
8 Receivable in the amount of Adjustment the and must pay the amount of that Adjustment to
9 Silo.” *Id.*

10 26. A separate provision (at SRA § 13) gave Silo the right to demand repurchase of
11 any particular receivable upon a “Repurchase Event,” which would be deemed to have occurred
12 “if (i) any representation or warranty made by Supplier in Section 12 with respect to such
13 Purchased Receivable shall be inaccurate, incorrect or untrue on any date as of which it is made
14 or deemed to be made; or (ii) Supplier confirms or issues a refund to the applicable Obligor for,
15 or accepts a return of, the goods and/or services whose sale gave rise to such Purchased
16 Receivable.” SRA § 8. As benign as that provision may have seemed, a review of the
17 representations and warranties stated in Section 12 and covenants listed in Section 13 of the SRA
18 show that the agreement was weaved with tripwire *ab initio*. Several of the enumerated items in
19 those sections would have been problematic for *any* produce seller covered by PACA and the
20 statutory trusts that automatically arise by operation of law upon the sale of perishable produce.
21 *See* SRA § 12 (rep and warranty re: purchased receivables being “free and clear of any and all
22 liens, charges, attachments or security interests” and will be paid without defenses, offsets, or
23 other rights of return); *id.* § 13 (covenant that Supplier would not “create, incur, assume, or
24 permit to exist any lien upon or with respect to any Receivable now owned or hereafter acquired
25 by Supplier”).¹³

26 27. The only apparent situation in which Silo agreed to expressly bear an Obligor’s
27 credit risk was in the event of a reduction “resulting *solely* from an Insolvency Event [undefined]
28

¹³ Any produce seller covered by PACA who factored invoices through the Silo Instant Pay program would have been vulnerable to an immediate Repurchase Event by virtue of the PACA statutory trust arising by operation of law when perishable produce is sold.

of the applicable Obligor or the financial inability of the Obligor to pay such Receivable.” *Id.* § 27 (definition of “Adjustment”) (emphasis added). While nothing in the remaining terms of the Agreement stated that a Supplier would be required to pay to Silo the full amount of any unpaid invoice if not fully paid by an Obligor, it is what Silo expected and routinely charged to participants like Dasagroup. It is also what Silo told customers in their online FAQs about the Instant Pay Program:

What happens if my customer pays late? What if they don’t pay at all?

If your customer does not end up paying the invoice, you will still be responsible for reimbursing Silo for the balance owed. This will occur with the scheduled repayment at the expected payment date. Silo’s payment processing and reconciliation service will still process customer payments even if Silo has already been reimbursed for the funded invoice.

See Blog Post: *It’s Your Cash. Put it to work: Silo Instant Pay FAQs* published by Silo Technologies, available at: <https://usesilo.com/blog/its-your-cash-put-it-to-work>.

28. Even though the arrangement did not transfer credit risk to Silo, Section 17 of the Master Services Agreement stated that the parties agreed that the factoring arrangement was intended to be a “true sale” of the receivables to Silo, and that, to avoid a court deeming it otherwise, the Supplier (here, Dasagroup) granted Silo a security interest in *only those receivables factored under the program*:

17. Security Interest in Purchased Receivables

The parties hereto agree that each purchase and sale of Receivables under this Agreement is intended to be an absolute and irrevocable transfer constituting a “true sale” for bankruptcy law purposes, without recourse by Silo to Supplier for any credit risk or financial inability to pay of any Obligor. The parties hereto have structured the transactions contemplated by this Agreement as a sale, and each party hereto agrees to treat each such transaction as a “true sale” for all purposes under applicable law and accounting principles, including, without limitation, in their respective books, records, computer files, tax returns (federal, state and local), regulatory and governmental filings (and shall reflect such sale in their respective financial statements). Supplier will advise all persons inquiring about the ownership of the Receivables that ***all Purchased Receivables*** have been sold to Silo. Against the possibility that, contrary to the mutual intent of the parties, the purchase of any Purchased Receivable is not characterized as a sale by any applicable court, Supplier hereby grants to Silo a security interest in, and right of setoff with respect to, all of the Purchased Receivables and all proceeds thereof to secure the payment and performance of Supplier’s payment and performance

obligations hereunder. The grant of each security interest herein is a supplemental protection to Silo and is not meant to negate or affect in any way the intended sale of the Purchased Receivables by Supplier to Silo and the fact that the parties intend for the Purchased Receivables to be assets of Silo. Silo is hereby authorized to file UCC financing statements with respect to the transactions contemplated hereunder, including the security interests granted herein, together with any continuations and amendments relating thereto.

SRA § 17 (emphasis added).

29. Unbeknownst to Dasagroup, there were several additional problems with the SRA and the specific provisions referenced above. When Dasagroup entered into its contract with Silo, there was no legitimate business justification for the excessive charges, transaction fees, and late fees assessed under the SRA. These fees were not commercially reasonable, were disproportionate to the actual costs incurred by Silo related to those provisions, and did not bear any reasonable relationship to the range of actual damages that the parties could have anticipated would flow from any late payment or other breach of the agreement. For instance, the late fees under section 6 — which was expressed as a sum of an escalating percentage (0.5% or 1.5%) *plus* the standard “Transaction Fee” (2% in the case of Dasagroup) — were not reasonable under the circumstances at the time Dasagroup entered into to the Instant Pay contract, and they bore no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a late payment. As such, they are invalid contractual penalties under California Civil Code § 1671(b) and, for reasons described *infra*, violate the state prohibition on usury. Even as to the Transaction Fee itself, which was negotiated in Silo’s discretion from supplier to supplier under the Instant Pay Program, there was no justification for the 2% transaction fee assessed on Dasagroup’s factored receivables and on further payments made under the program; any such fees were unlawful, unconscionable, and disproportionate to the actual costs incurred with processing any such payments.

30. The effective result of this documentation was that Silo had created a lending program that masqueraded as a factoring arrangement but without transferring the Obligor’s credit risk to Silo. And it made misleading statements to prospective customers when advertising the benefits of its program. For instance, in its website marketing materials promoting the program to prospective borrowers like Dasagroup, Silo advertised that the

1 financing it provided through the Instant Pay Program was superior and more cost affordable
2 than traditional accounts receivable financing, which it contrasted as follows:

3 . . . This article will act as a learning guide to teach you about what accounts
4 receivable factoring entails, the cost of it, and what other alternative lending
5 funding structures exist to ensure strategic management and long-term success for
6 your business.

7 **What is accounts receivable factoring?**

8 When businesses are strapped for cash and are in need of money faster than
9 customers can pay their bills, they might consider accounts receivable factoring.
10 In practice, the business would sell at least one invoice to a lending company for
11 an advance payment. In exchange for quick payment, businesses will have to pay
12 a fee.

13 Some view it as useful for bridging cash flow gaps, though this finance option is a
14 more expensive method of lending.

15 Plus, if a distributor cannot pay, it's common for factoring companies to go after a
16 business' customers. This is less than ideal, as it can cause reputational damage
17 that prevents other businesses from wanting to work with them.

18 Regardless, accounts receivable factoring is not technically considered a loan.
19 Although businesses that don't traditionally qualify for bank loans based on poor
20 or short credit history may opt for it (i.e., businesses that aren't a large
21 corporation), it's generally seen by most businesses as a funding method that has
22 many downsides.

23 . . .

24 **Is accounts receivable factoring the best option?**

25 Oftentimes, no, accounts receivable factoring is not what's considered the most
26 optimal. While it may provide your business with temporary cash relief, there are
27 some huge disadvantages of using the service that you need to know.

28 First, it can be a very expensive business accounting process, where fees typically
range from 1 to 5% each month. Also, if you agree to recourse factoring, you'll be
on the hook for a customer's unpaid invoice.

Second, the fee structure is entirely dependent on the customer—the longer they
wait to pay their invoice, the heftier fees you'll be charged. This can make it
difficult to make a payment plan and informed business decisions about the
future.

1 Third, if you're operating in an industry like the produce supply chain where
2 healthy business partnerships are highly valued, having an external third party act
3 as a collector can create the risk of straining your relationships. It means, to some
4 extent, relinquishing control.

*In the worst case scenario, it can significantly damage your business' reputation
and cause long-term losses.*

Alternative financing emerges as a solution

6 Traditional lending strategies and invoice factoring are not your only two options
7 when your business needs working capital. Consider Silo Capital for your go-to
8 alternative financing solution, particularly when your business hits a rough patch
9 that increases your credit risk or prevents you from securing a line of credit or
loan from a bank.

10 Instead of seeking help from a bank that requires collateral or forces you to
11 commit to a rigid contract with strict obligations, you can rely on Silo to provide
12 you with flexibility, security, cost-effectiveness, and a range of options that help
you out of a bind.

13 Silo has partnered with small and medium-sized businesses like yours to inform
14 our products. Large banks have dominated access to funding for far too long,
15 giving businesses like yours no option but to pay outrageous fees tied to inflexible
16 terms and conditions (fees best suited for a large corporation). Silo has since
stepped in to provide distributors like you with a tailored financial product that
gives you more purchasing power and control over your business.

17 With Silo Capital, your small business doesn't have to stress over customers
18 paying their invoice. Silo Instant Pay allows your business to receive 90% of the
19 invoice amount in only 3 days, and unlike other solutions, repayments are
flexible.

20 The reason Silo works so well is that your business can maintain total control over
21 customer communications, have 100% funding transparency, and have clear
repayment schedules so your business can plan ahead.

22 Silo Cash Advance encourages strategic investments to support your business
23 operations. Don't wait for a bank to approve a loan. Instead, invest in time-
24 sensitive opportunities, diversify product lines, secure stable supplier
relationships, and vertically integrate your business to promote lower costs or
launch a rebrand.

25 With flexible funding options at hand, your business can bridge cash flow gaps so
26 you can keep your business going and growing.

27 Book a demo with Silo today!

1 **Exhibit A** (Blog Post: *Silo: A Better Alternative to Accounts Receivable Factoring*, available at:
2 <https://usesilo.com/blog/silo-a-better-alternative-to-accounts-receivable-factoring> (emphasis
3 added).

4 31. These statements were false and misleading because they implied that the
5 alternative financing products offered by Silo were of a different quality and character than the
6 accounts receivable factoring contrasted in the article. These untrue, deceptive and/or
7 misleading statements included the following:

8 a. that accounts receivable factoring was a more expensive method of
9 lending;

10 b. that, if a distributor cannot pay, it is “common” for factoring companies to
11 “go after a business’ customers”;

12 c. that accounts receivable factoring “is not technically considered a loan”;

13 d. that Silo’s alternative financing arrangements were less costly than
14 factoring, under which fees typically range from 1% to 5% per month;

15 e. that, in contrast to factoring, the fee structure of Silo’s alternative
16 financing arrangements were not dependent on the obligor’s delay in paying on the receivables
17 owed and that “heftier fees” would not be charged the “longer [customers] wait to pay their
18 invoice”;

19 f. that, in contrast to recourse factoring, Silo’s alternative financing
20 arrangements would not place a supplier “on the hook for a customer’s unpaid invoice”;

21 g. that, in contrast to factoring, Silo’s alternative financing arrangements
22 would allow Instant Pay participants to maintain “total control” over their client communications
23 and avoid financiers “act[ing] as a collector”;

24 h. that, in contrast to factoring, Silo’s alternative financing arrangements
25 would allow Instant Pay participants to avoid the risk of “straining [customer] relationships,
26 “damag[ing] [their] business reputation,” and “caus[ing] long term losses”;

27 i. that, unlike “a bank that requires collateral or forces [one] to commit to a
28 rigid contract with strict obligations,” participants in Silo’s alternative financing arrangements

1 “can rely on Silo to provide . . . flexibility, security, cost-effectiveness, and a range of options to
2 help . . . out of a bind”;

3 j. that participants in Silo’s alternative financing arrangements do not have
4 to “stress over customers paying their invoice”;

5 k. that participants in Silo’s alternative financing arrangements “can bridge
6 cash flow gaps so [they] can keep [their] business growing and growing”; and

7 l. that “Silo Instant Pay allows your business to receive 90% of the invoice
8 amount in only 3 days, and unlike other solutions, repayments are flexible.”

9 32. Many of these untrue, deceptive and/or misleading statements about the Instant
10 Pay Program — i.e., statements about its fees, flexibility, patience with customer collections,
11 non-interference with customer communications, and willingness to extend credit to bridge cash
12 flow gaps — were similar, if not identical, to the same alleged benefits that Silo’s representatives
13 Jeff Butler and Alex Archer touted directly to Dasagroup to induce the company to enter into the
14 Instant Pay Program. At the time these and other statements were made to Dasagroup and other
15 prospective customers, Silo’s representatives knew that these statements were untrue, deceptive
16 and/or misleading, and they knew that these were matters of importance to customers like
17 Dasagroup.

18 33. These statements were, indeed, important to Dasagroup, and Dasagroup acted in
19 reliance on how Silo represented it would act toward Dasagroup as a new financier. Dasagroup
20 entered into the Silo Instant Pay program in reliance on Silo’s statements that (i) Silo would not
21 interfere with Dasagroup’s customer relationships; (ii) Silo would be flexible on payments
22 arriving from Dasagroup’s customers on any pertinent receivables; (iii) Silo’s Instant Pay funds
23 could be for Dasagroup’s cash flow gaps so it could keep growing its business; (iv) Silo would
24 avoid acting as a collector on invoices; (v) Silo would work with Dasagroup on delayed
25 payments by Dasagroup’s customers and would work with Dasagroup to credit or reverse any
26 late fees and/or disputed charges as appropriate; and (vi) Silo would act with flexibility on a
27 repayment schedule and that repayments would be flexible to help Dasagroup out of any
28 difficulties it may encounter in its operations.

1 34. While the parties' initial course of dealing did appear to match this understanding,
2 Silo abruptly changed course in the spring of 2024 when it appears to have defaulted on a credit
3 facility that it and/or one of its affiliates owed to Plaintiff Jefferies. At all relevant times, Silo
4 knew that Dasagroup was a purveyor of avocados and was one of several competing purveyors
5 of avocados who participated in the Instant Pay Program (one of which was featured prominently
6 on Silo's website).

7 **D. Under The Course of Dealing that Developed Between Silo and Dasagroup, Silo**
8 **Understood that Dasagroup Was Using Funds Obtained via the Instant Pay**
9 **Program For Working Capital to Pay Suppliers and Grow Its Business.**

10 35. For the course of the parties' relationship under the Instant Pay Agreement and
11 during a period when Dasagroup had been misled about Silo's interpretation of the Instant Pay
12 contract and its anticipated course of dealing under the program, Dasagroup received funds as
13 advances on accounts receivables under the Agreement and made payments on the loans incurred
14 in accordance with the terms of the Instant Pay Agreement, as it had been understood by
15 Dasagroup in light of Silo's representations about the way the program worked and how it would
16 operate as Dasagroup's financier.

17 36. Dasagroup was a solid participant in the program. For almost two years,
18 Dasagroup factored certain receivables (but not all receivables) owed by its then-largest
19 customer under the Silo Instant Pay Program and used the funds received to grow its business
20 and use the profits of those efforts to pay down its balance owed to Silo. Over the course of the
21 parties' relationship, Dasagroup made payments of more than \$5.5 million dollars to Silo to
22 repay credit that had been extended through the program. The volume of factored invoices was
23 initially small but grew over time as Dasagroup's business improved through the use of the
24 Instant Pay Program.

25 37. During this time, Dasagroup and Silo developed a course of dealing whereby Silo
26 acted with flexibility toward Dasagroup and encouraged the company to grow its business
27 through the program. Because the volume of Dasagroup's transactions had increased
28 significantly, Silo acted with flexibility toward Dasagroup and did not demand immediate
payment of all amounts due under the program on unpaid receivables.

1 38. During this time, Silo also encouraged Dasagroup to use the company's AI
2 platform for order processing and inventory management, but Dasagroup chose not to do so to
3 avoid disrupting its existing systems and course of dealing with its customers. Silo
4 accommodated Dasagroup in this respect and did not demand that it only use its platform for its
5 operations. In addition, Silo also encouraged Dasagroup to factor other invoices owed by
6 Dasagroup's other customers, but Dasagroup chose not to do so, and Silo also accommodated
7 that decision.

8 39. Everything abruptly changed in early April 2024 when Alex Archer of Silo called
9 Dasagroup to inform Dasagroup that it had encountered "difficulties" with "its [Silo's] lender"
10 and could no longer extend credit to Dasagroup under the program. This was the first time that
11 Dasagroup was informed that Silo had a lender and that the funds extended to it were funds that
12 Silo owed to another party. At the time, Mr. Archer asked if Dasagroup could make payments on
13 its account, but assured Dasagroup's CEO that Silo was likely to work out its issues with its
14 lender and that its participation in the program would likely resume.

15 40. Ultimately, that did not occur for reasons beyond Dasagroup's control. Silo did
16 not reinstate Dasagroup's participation in the program and, upon information and belief, also
17 shut down other purveyors' access to the Instant Pay Program. By February 2024, Dasagroup's
18 largest customer, London Fruit, had owed a \$3.5 million balance to Dasagroup on unpaid
19 receivables and significantly delayed payments on Dasagroup's receivables. Upon information
20 and belief, London Fruit's new parent company, Grubmarket, had taken over London Fruit's
21 operations and was using London Fruit's operating cash for other purposes, to the exclusion of
22 debts owed to suppliers like Dasagroup. Dasagroup attempted to explain the situation to Silo and
23 committed to paying on its account as soon as possible.

24 41. During this time, Dasagroup informed Silo that it was unable to meet its payment
25 schedule under the Agreement and gave assurances to Silo that it would satisfy its payment
26 obligations. At the time, section 26 of the Silo Instant Pay Contract contained a broad *force*
27 *majeure* clause which stated, "Neither Party shall be liable for failure to perform or for delay in
28 performance due to fire, flood, strike, or other labor difficulty, act of God, act of any
governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in

1 transportation, inability to obtain necessary labor, or materials from usual sources, or due to any
2 cause beyond either Party's reasonable control ('Force Majeure Event')." Nevertheless, Silo
3 charged Dasagroup for London Fruit/Grubmarket's non-payment of the factored Instant Pay
4 receivables. In addition, Silo and its newly-disclosed lender, Plaintiff Jefferies, threatened
5 Dasagroup with a lawsuit and a demand for accelerated payments of its entire obligation. These
6 amounts demanded included the money allegedly owed on these receivables from London Fruit.

7 42. In late April 2024, Dasagroup was introduced to representatives of Silo's silent
8 lender, Plaintiff Jefferies, to whom Silo represented it had assigned its payment interest on the
9 debt owed by Dasagroup and demanded additional information about the existing debt to
10 Dasagroup owed by London Fruit. On a conference call with Silo, Jefferies immediately
11 threatened to sue Dasagroup and demanded an explanation as to why payments had not been
12 made. In response, Dasagroup told Jefferies about the amount owed by London Fruit, what it
13 knew about London Fruit and Grubmarket's delayed payments, and told them that they should be
14 accommodating in awaiting payment to allow Dasagroup's business to continue and generate
15 more cash that could be used to pay down the balance. At this time, Plaintiff Jefferies learned of
16 the existence of the contract existing between Dasagroup and London Fruit, including the
17 existence of various receivables owed by London Fruit on non-factored invoices for prior
18 deliveries of avocados made by Dasagroup. Dasagroup also told Jefferies that it intended to
19 pursue other business opportunities in the meantime with its other existing customers, one of
20 which names was disclosed to in passing.

21 43. Based on that information and to maximize leverage in the situation, Silo and
22 Jefferies, acting in concert and with the authorization of each other, threatened to immediately
23 sue Dasagroup and its existing customers if it did not reach an immediate payment plan to repay
24 the debt owed to Silo. They demanded immediate payment on all factored receivables and
25 threatened to take legal action against *Dasagroup and all of its customers* to force Dasagroup to
26 immediately pay amounts owed, even if any income Dasagroup received from other customers or
27 other non-factored receivables was earmarked to pay suppliers it owed for its prior deliveries of
28 produce. Silo and Jefferies, acting in concert, sent a proposed forbearance agreement with an
onerous payment schedule for Dasagroup to review.

1 44. While the terms of a possible forbearance agreement were being negotiated in
2 early May 2024 among the parties, Silo and Jefferies, acting in concert and with the authorization
3 of each other, decided to showcase the severe economic harm they could cause Dasagroup by
4 ruining its business and its customer relationships. In a bold flex intended to scare Dasagroup
5 into entering into an onerous payment schedule under a forbearance agreement, Silo and Jefferies
6 improperly contacted London Fruit and the one other Dasagroup customer that had been
7 previously disclosed to demand that Dasagroup's customers remit all further payments of monies
8 directly to accounts controlled by Silo, even though the payments demanded were either not
9 factored through the Instant Pay Program or included other invoices that were not factored under
10 the program. These acts included service of a fraudulent Notice of Assignment on Silo
11 letterhead, signed by Jeff Butler, that falsely announced that Dasagroup had entered into a
12 financing agreement with Silo; that Silo had been granted a security interest in "all" of
13 Dasagroup's factored receivables; that the terms of financing "require that payments on all
14 accounts receivable be made to Silo"; and that directing that the recipient "make payment on all
15 accounts receivable and all other amounts owing to Kickhass Avocados." These statements were
false when made, especially with respect to a claim on "all" accounts receivable.

16 45. Because many of the recipients' accounts receivable were not factored under the
17 Silo Instant Pay Program (one of which customers had no invoices factored whatsoever), neither
18 Silo nor Jefferies held a valid security interest in those accounts receivable under the terms of the
19 Instant Pay Program or any other agreement. In addition, Dasagroup refused to signed any
20 written assignments of collection to Silo or Jefferies.

21 46. Despite having no valid enforceable security interests in all of Dasagroup's
22 accounts receivable, Jefferies took intentional and wrongful action to initiate contact with
23 London Fruit and at least one other customer of Dasagroup to claim that it held a security interest
24 in all of Dasagroup's accounts receivable (including non-factored receivables) and demanded
25 that any invoices to be paid by those customers to Defendant/Counterclaimant be paid directly to
26 accounts under the control of Jefferies and/or Silo. Upon information and belief, Jefferies and
27 Silo, acting in concert, did this by misinforming these other customers that they held a security
28 interest in all of Defendant/Counterclaimant's accounts receivable, which was not true. They

1 knew that it did not hold a security interest in all of Defendant/Counterclaimant's accounts
2 receivable, but made these misstatements anyway to induce the recipients to pay Silo instead of
3 Dasagroup on debts owed and to deprive Dasagroup of payments for prior deliveries of produce
4 already made.

5 47. In taking this action, Plaintiff Jefferies acted maliciously, fraudulently and
6 oppressively, and with the wrongful and deliberate intention of injuring Defendant/
7 Counterclaimant and benefiting themselves to Dasagroup's detriment, in addition to acting with
8 an improper motive amounting to malice and conscious disregard of Dasagroup's rights.

9 48. More importantly, Jefferies and Silo took this action to cause Dasagroup to agree
10 to the forbearance agreement under severe economic duress, which they ultimately
11 accomplished. Both Silo and Jefferies made a threat (and also carried out a threat) to assert
12 rights that neither of them legally had; they did this via fraudulent and deceptive communications
13 to Dasagroup's existing customers; and they effectively prevented Dasagroup from exercising its
14 free will, agency and judgment in deciding to enter into the onerous Forbearance Agreement that
15 it ultimately signed to prevent further harm to its business and reputation.

16 49. At the time Dasagroup acquiesced to Jefferies and Silo's demands to sign the
17 Forbearance Agreement, Dasagroup had no reasonable alternative but to comply with their
18 onerous demands, lest its business be destroyed completely by further improper communications
19 sent to its customers and threats to embroil them in litigation, even in the absence of any right to
20 collect against them on non-factored receivables. Under severe economic duress this — to avoid
21 litigation against it and its innocent customers, to avoid further improper claims against its
22 customers, and to avoid the destruction of its business — Dasagroup agreed to a Forbearance
23 Agreement with Silo and Plaintiff Jefferies,.

24 50. The terms of the Forbearance Agreement were unlawful and incorporated various
25 significant fees and other charges of the SRA (including transaction fees and late fees). It
26 required that Dasagroup meet an onerous payment schedule totaling over \$3,000,000 over a
27 series of months and assessed late fees "as calculated pursuant to Section 6 of the Sale
28 Agreement" if Dasagroup was delayed in paying any installment, plus an additional 3% monthly

1 financing charge for any payment deficiencies under the schedule. These provisions are punitive
2 in nature and operate as an unlawful forfeiture.

3 **E. When One of Dasagroup's Customers Defaulted on Its Receivables, Dasagroup**
4 **Could Not Keep Pace With All Amounts Demanded by Silo Under the Program,**
5 **Including The Amounts Allegedly Owed On Its Customer's Unpaid Invoices.**

6 51. Kickhass sold produce to Co-Defendant London Fruit, Inc., which produce was
7 delivered to London Fruit with a promise to pay for the items delivered. As stated previously, in
8 early 2024, just months after London Fruit was sold to Grubmarket, it began to underpay on
9 payments due to Dasagroup and, months later, eventually stopped paying altogether.

10 52. Dasagroup made considerable efforts at payment after signing the Forbearance
11 Agreement while still attempting to collect from London Fruit. Dasagroup made repeated
12 payments of well over \$100,000 on multiple occasions, but it was never enough for Jefferies,
13 who assessed further improper interest charges, late fees, and forfeitures, in addition to declaring
14 other rights of acceleration under the Forbearance Agreement. During this time, Jefferies also
15 began to demand information from Dasagroup, including sensitive business information about its
16 business and operations. Some of this information was shared in redacted format under an
17 agreement between the parties that any such confidential business information provided to
18 Jefferies would remain private and confidential. During this time, Dasagroup again reiterated to
19 Jefferies that it had not been paid significant amounts by London Fruit, who Jefferies came to
20 learn was Dasagroup's biggest customer and had received shipments of produce after Silo had
21 terminated Dasagroup's participation in the Instant Pay Program.

22 53. After learning this, Jefferies initiated this lawsuit against Dasagroup and London
23 Fruit, even though Jefferies had no claim on non-factored invoices (especially those invoices for
24 produce delivered in July 2024 and thereafter). After being sued in this action, London Fruit
25 stopped doing all business with Dasagroup entirely and stopped paying on all outstanding
26 invoices, thereby collapsing Dasagroup's business entirely, from which it has yet to recover.

27 **F. Unbeknownst to Dasagroup, Silo Was Not Licensed in California to Conduct**
28 **Commercial Lending Activities.**

1
2 54. At all relevant times under the Instant Pay Program, Dasagroup was not aware
3 that, among other things, Silo loaned third party funds, was not sufficiently capitalized to carry
4 out its business, and was not licensed to provide the financing services contemplated by the
5 Instant Pay Program.

6 55. Upon information and belief Plaintiff Jefferies Funding LLC is one of several
7 financial partners who provided funding for Silo's lending program. Upon information and
8 belief from public sources, Plaintiff had extended a \$100 million secured credit facility that was
9 used by Silo to extend problematic loans to participants in the perishable produce industry like
10 Dasagroup.

11 56. Unbeknownst to Dasagroup and other participants in Silo's Instant Pay Program,
12 the loans provided to them by Silo in exchange for their factored receivables were paid by funds
13 that Silo procured from its financier Jefferies, and not from funds raised by or belonging to Silo
14 itself. Also unbeknownst to Dasagroup was that (i) Silo was an unlicensed lender with respect to
15 the Instant Pay Program and was not properly licensed to provide the financing services it
16 extended to Dasagroup (and others), and (ii) Jefferies — one of the sources of funds used by Silo
17 to finance Dasagroup's factored receivables — was a silent lender whose parent company,
18 Jefferies Financial Group, was a conflicted investor in Silo.

19 57. Dasagroup has also learned of the following concerns relating to Silo, all of which
20 are imputed to Plaintiff Jefferies as the alleged successor in interest of Silo's rights under the
21 Agreement, and none of which were disclosed to Dasagroup before or during the period it was
22 factoring receivables through the Instant Pay program:

23 a. Silo did not have capital sufficient to fund its loans and that Silo was
24 essentially an intermediary providing third party funds (including Plaintiff Jefferies's funds) to
25 its clients like Defendant/Counterclaimant Dasagroup;

26 b. Silo does not hold or maintain a license under California Financing Law to
27 operate as a finance broker or finance lender and, therefore, is not authorized to make or broker
28 commercial loans;

c. Silo knew or should have known that it was required to obtain and

1 maintain a finance lender and/or finance broker license under California Financing Law and
2 knowingly and willfully failed to obtain said licensure;

3 d. Silo structured its business and contracts in such a manner as to disguise
4 or conceal the fact that it operated as the public facing member or participant of “table lending”
5 program targeting, *inter alia*, the fresh produce industry;

6 e. The money Silo be paid to Dasagroup and others as part of the factoring
7 arrangement under the Instant Pay Program would originate from Jefferies, whose ultimate
8 parent, Jefferies Financial Group, was owned in part by Blackrock, Inc., a private equity firm
9 that was a key investor in Silo’s direct competitor, Grubmarket, Inc. At no time was Dasagroup
10 informed of Jefferies’s conflict of interest — i.e., that it was extending credit to Silo while its
11 parent company’s 7.5% owner, Blackrock (the largest or second-largest shareholder in Jefferies
12 Financial at the time), had a considerable ownership stake in Grubmarket via at least two rounds
13 of disclosed financing. At no time, however, was Dasagroup informed that the credit terms,
14 approvals, repayment policies, or exercise of payment rights and obligations under the Silo
15 Instant Pay Program could be influenced by Jefferies’s conflict of interest — i.e., exercised in
16 such a way that would benefit Silo’s direct competitor, Grubmarket, rather than Silo itself and
loyal clientele like Dasagroup.

17 f. There was a considerable risk that Dasagroup’s most sensitive and critical
18 business information it intended to share with Silo —i.e., competitive intelligence about
19 Dasagroup’s pricing, suppliers, and customers — could possibly be shared with a financial
20 institution beholden to the interests of Silo’s direct competitor, Grubmarket, who fatefully
21 purchased Dasagroup’s then-largest customer, London Fruit, Inc., a Texas-based wholesaler that
22 was recently acquired by Grubmarket, Inc., which has its principal place of business in San
23 Francisco, California.

24 58. On information and belief, under the foregoing arrangement Silo provides third
25 party funds and is not sufficiently capitalized to carry out its business and the following sequence
26 of events took place between one of Silo’s borrowers:

27 a. Upon information and belief, Silo’s commercial lending services operated
28 in a manner similar to a “table lending” or “table funding” program

1 wherein Silo would originate loans for which it did not have sufficient
2 capital to fund. Instead, Silo had a financial arrangement with other or
3 larger lenders or investors to provide capital necessary to fund the loans
4 Silo originated for the benefit of itself and the members of its “table
5 lending” program.

6 b. Upon information and belief, beginning in January of 2024, Silo began to
7 lack adequate capitalization to operate under its written lending
8 agreements, which provided ongoing lending or cash advance obligations
9 on the part of Silo, and it was unable to sustain any losses resulting from
10 its inability to collect upon its own accounts receivable or loan debt.

11 c. Upon information and belief, in April of 2024, Silo provided one of its
12 clients with multiple email notices regarding “an expected situation that has temporarily affected
13 our banking system” and similar statements regarding Silo’s inability to access or provide
14 funding to its customers.

15 d. In May of 2024, TechCrunch published an online article that reported that
16 Silo had difficulty collecting a loan from one of its customers and this caused Silo’s bank to
17 pause the loan product.

18 59. Upon information and belief, due to Silo’s inability to manage its own operations,
19 exemplified by its lack of proper licensing to carry out its primary business, makes all prior
20 agreements executed with Kickhass unlawful and voidable at Kickhass’s prerogative and to the
21 extent alleged here. Among other things, Silo, with Plaintiff Jefferies as its silent lender, was
22 acting as an unlicensed lender toward Dasagroup in connection with the Silo Instant Pay
23 Program, and charged Dasagroup with interest, fees, and penalties that, individually and
24 collectively, exceeded the maximum rate permitted under the California state constitution
25 prohibition on usury found at Cal. Const. Art. XV, § 1(2).

26 60. Unaware of the foregoing, Kickhass entered into a Forbearance Agreement
27 (“Forbearance”) with Plaintiff and Silo on or about June 19, 2024 for the amounts that Plaintiff
28 claimed were owed under the Supplier Receivable Sales Agreement with Silo, an unlicensed
finance lender. In negotiating the Forbearance, Plaintiff Jefferies improperly attempted to secure

1 a contractual agreement from Dasagroup to pay the invalid late fees and other charges under the
2 SRA that violated the Civil Code § 1671(b) and the California state constitutional prohibition on
3 usury.

4 61. In addition to containing overbroad and unlawful waivers of rights that are void as
5 against public policy, the terms of repayment under the Forbearance are onerous, and contain
6 liquidated damages that are punitive in nature in violation of California Civil Code § 1671(b).

7 62. In entering the Forbearance with Kickhass, Plaintiff and Silo coercively
8 demanded the inclusion of a waiver of all claims or threatened litigation.

9 63. Some time after execution of the Forbearance, Co-Defendant London Fruit, Inc.
10 ceased doing business with Kickhass Avocados and refused to pay outstanding invoices owed.

11 64. Kickhass was unable to satisfy the repayment schedule found in the Forbearance
12 and informed Plaintiff, who has since initiated this lawsuit.

13 65. Kickhass therefore brings this Third-Party Complaint for the claims asserted
14 below against Silo Technologies, Inc.

15 **FIRST CLAIM**
16 **Declaratory Relief**
17 ***(Against Silo Technologies)***

18 66. Kickhass re-alleges and incorporates by reference the allegations contained in
19 paragraphs 1 through 26 as if fully set forth herein.

20 67. An actual, present, and justiciable controversy has arisen between Kickhass and
21 Silo concerning their respective rights under their contractual agreements, including but not
22 limited to the Supplier Receivable Sales Agreement, Forbearance Agreement, and any and all
23 payments made under those agreements to Silo and Plaintiff.

24 68. Under Civil Code § 1689 and other applicable law (including laws governing
25 unlicensed commercial lenders), Kickhass is entitled to a declaration that they may rescind the
26 Supplier Receivable Sales Agreement.

27 69. Kickhass seeks rescission of both Supplier Receivable Sales Agreement and the
28 Forbearance Agreement pursuant to Civil Code § 1689 because of one or more of the following:
(i) Kickhass's consent to those agreements was obtained through duress, menace, fraud, or undue
influence; (ii) if the consideration for the obligation of Kickhass fails in a material respect from

1 any cause; (iii) the contracts are unlawful for causes which do not appear in their terms or
2 conditions, and the parties are not equally at fault (including specific violations of California
3 state law); and/or (iv) because the public interest will be prejudiced by permitting the
4 Agreements to stand.

5 70. In addition, the Supplier Receivable Sales Agreement appears to be one-sided and
6 illusory. The plain language of the Supplier Receivable Sales Agreement document provides no
7 remedy whatsoever for Kickhass in the event that Silo breaches the agreement or any associated
8 agreement, or commits any other tort or violation of the law in connection with its performance
9 (or nonperformance) of the lending agreement. As such, Silo is at liberty to decide without
10 consequence when and if it will perform, rendering the lending agreement illusory as Silo has no
11 real obligation to do anything. Therefore, Kickhass respectfully requests that the Court should
12 determine that the entire lending agreement is void *ab initio*, as it is illusory, void for lack of
13 mutuality, obligation, and consideration, and as such, against public policy.

14 71. The Supplier Receivable Sales Agreement also contains unlawful punitive
15 provisions for late payments in violation of California law.

16 72. Finally, because Silo was not licensed to engage in commercial lending or operate
17 as a commercial bank, the Supplier Receivable Sales Agreement is unenforceable, as are any of
18 the obligations proceeding therefrom. Likewise, the Forbearance Agreement that subsumed the
19 obligations Kickhass owed to Silo into the outstanding debts Silo owed to Plaintiff Jefferies is
20 unenforceable as it proceeds from and seeks to enforce debts incurred under the unenforceable
21 Supplier Receivable Sales Agreement.

22 73. The terms of the Forbearance Agreement are, on their own, substantively and
23 procedurally unconscionable and unenforceable. They also seek to ratify amounts owed under
24 an unenforceable Supplier Receivable Sales Agreement. The accelerated payment, punitive
25 provisions, and lack of mutuality, obligation, and consideration also render it void and contrary
26 to public policy as well.

27 WHEREFORE, Kickhass prays for relief as set forth below.
28

SECOND CLAIM
Unjust Enrichment re: MSA & Forbearance Agreement
(Against Silo Technologies)

74. Defendant/Counterclaimant re-alleges and incorporates by reference the allegations contained in this Counterclaim and Cross-Claim as though fully set forth herein and incorporates them as though fully set forth herein.

75. By their wrongful acts and omissions, Plaintiff was unjustly enriched at the expense of and to the detriment of Defendant/Counterclaimant or while Defendant/Counterclaimant was unjustly deprived.

76. As set forth in greater detail above, Plaintiff charged onerous and improper late fees in violation of California law. The late fee provisions were unreasonable under the circumstances existing at the time the contract was made, and operate as an unlawful liquidated damages clause under California Civil Code § 1671(b). Moreover, the usurious and unlawful transaction costs and punitive late fees paid with respect to the Sales Agreement and Forbearance Agreement were procured through coercion and duress, as set forth in detail above.

77. Plaintiff will be unjustly enriched if allowed to retain such funds. Defendant/Counterclaimant is entitled to a refund of all such fees, and seeks an order of this Court disgorging Plaintiff of all improperly held late fees. Defendant/Counterclaimant also seeks costs of suit and other pecuniary loss to be proven at trial..

WHEREFORE, Kickhass prays for relief as set forth below.

THIRD CLAIM
Breach of Covenant of Good Faith and Fair Dealing
(Against Silo Technologies)

78. Kickhass re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 45 as though fully set forth herein.

79. Defendant/Counterclaimant re-alleges and incorporates by reference the allegations contained in this Counterclaim and Cross-Claim as though fully set forth herein and incorporates them as though fully set forth herein.

80. Implied in every contract or agreement is a promise of good faith and fair dealing. This means that each party agrees not to do anything to unfairly interfere with the right of the

1 other party to receive the benefits of the agreement and to refrain from taking actions that will
2 injure the right of the other party to receive the benefits of the contract.

3 81. Plaintiff Jefferies and its predecessor in interest Silo breached the implied
4 covenant of good faith and fair dealing in a variety of ways that resulted in considerable harm to
5 Dasagroup. Among other things, Jefferies its predecessor Silo breached the implied covenant as
6 follows:

7 a. by refusing to advance further funds to Dasagroup under Silo Instant Pay
8 Program by claiming, under pretext, that Dasagroup was over-extended and that there was no
9 further funding availability under the program when, in fact, that was only because Jefferies,
10 Silo's silent lender, was calling for Silo's payment under its larger lending facility with Jefferies
(which had not been disclosed to participants like Silo);

11 b. by declaring, suddenly and abruptly, that Dasagroup was over-extended on
12 its factoring obligations and needed to make considerable payments on its account (even though
13 this was not a recognizable concept in the parties' contract, was not part of the parties' course of
14 dealing, and even though Silo was aware of Dasagroup's good payment history and its
15 willingness to share information about its slow-paying accounts, customers, and inventory);

16 c. by charging fees, expenses, penalties and other items against Dasagroup's
17 reserve account without any transparency (which charges only contributed to Dasagroup's
18 alleged over-extended position in the eyes of Silo and Jefferies);

19 d. by attempting to exercise excessive control over Dasagroup's business by
20 attempting to control Dasagroup's operations and insisting on immediate payment (from
21 Dasagroup and customers like London Fruit) of Dasagroup's Instant Pay account to the exclusion
22 of Dasagroup's other operational needs (including its payments to suppliers, vendors, and
23 others), all of which operational control was not contemplated by the factoring arrangement and
24 amounted to an improper exertion of control over Dasagroup's business, in contravention of the
25 parties' agreement;

26 e. by initiating contact with Dasagroup's customers, informing them that a
27 debt was owed by Defendant/Counterclaimant as to other accounts receivables for other
28 customers like London Fruit, and demanding that any invoices to be paid by those customers to

1 Dasagroup be paid directly to Jefferies (which payment demands were either false or
2 exaggerated, especially with respect to customers whose invoices were not factored under the
3 program or for whom there was no conceivable claim to an interest in all accounts receivable).

4 f. by failing to acknowledge the broad force majeure clause at section 26 of
5 the SRA that should have benefited Dasagroup for any explanations for delays in payments or
6 operational difficulties beyond Dasagroup's reasonable control and that should not have resulted
7 in any additional fees, penalties, or charges assessed against Dasagroup);

8 g. by failing to acknowledge Dasagroup and Silo's developed course of
9 dealing under the Silo Instant Pay Program in which Silo was understanding of operational
10 difficulties that Dasagroup faced, including slow payment by Dasagroup's customers;

11 h. by claiming that Dasagroup was in default under the Silo Instant Pay
12 Program for pretextual reasons, at a point in time in which Dasagroup had been in substantial
13 compliance with its obligations over the parties' course of dealing, when the real reason that an
14 acceleration and/or immediate was demanded was to permit Silo to cure financial difficulties it
15 had with Jefferies under the lending facility used to fund the Instant Pay Program; and

16 i. by asserting invalid legal rights and threatening litigation against other
17 customers whose invoices were not factored to exert extreme economic duress on
18 Defendant/Counterclaimant to gain Dasagroup's acquiescence to the onerous terms of the
19 Forbearance Agreement, which incorporated by reference the usurious charges to be assessed
20 under the Silo Instant Pay contract.

21 82. All of the foregoing conduct violated the implied covenant of good faith and fair
22 dealing by Jefferies and its predecessor in interest Silo because they attempted to impose
23 substantive terms and conditions beyond those to which the contract parties actually agreed and
24 also unfairly frustrated Dasagroup's right to receive the benefits of the agreement it had actually
25 made with Silo.

26 83. As a direct and proximate result of Counter-Defendant Jefferies's breach of the
27 covenant of good faith and fair dealing, Counter-Claimant/Cross-Claimant has suffered, and will
28 continue to suffer, compensatory and special damages in an amount to be determined at trial that
include, but are not limited to, lost profits, lost business opportunities, diminution in the value of

1 the Dasagroup's business, loss of goodwill, harmed business reputation, impairment to
2 Dasagroup's business relationships, and resulting costs and expenses.

3 84. As a further direct and proximate result of the breaches by Counter-Defendant
4 Jefferies Funding, Counter-Claimant/Cross-Claimant is entitled to recover attorneys' fees and
5 other enforcement costs incurred in connection with this action.

6 85. Because Defendants' conduct alleged herein was done maliciously, oppressively,
7 deliberately, and/or with intent to defraud, Plaintiff is further entitled to an award of exemplary
8 and punitive damages pursuant to California Civil Code section 3294.

9 WHEREFORE, Counter-Claimant/Cross-Claimant prays for relief as set forth below.

10 **FOURTH CLAIM**
11 **Common Count - Money Had and Received**
12 **(Against Silo Technologies)**

13 86. Defendant/Counterclaimant re-alleges and incorporates by reference the
14 allegations contained in this Counterclaim and Cross-Claim as though fully set forth herein and
15 incorporates them as though fully set forth herein.

16 87. Plaintiff Jeffries and its predecessor in interest Silo received money belonging to
17 Defendant/Counterclaimant in the form of payments made by Dasagroup to Plaintiff that
18 constituted either unlawful late-fee penalties imposed on Dasagroup and/or usurious interest
19 payments charged by Plaintiff, as described in further detail above, under the terms of the
20 Supplier Receivable Sales Agreement, Silo Instant Pay Program, and/or subsequent Forbearance
21 Agreement between Jefferies and Dasagroup. Among other things, Dasagroup seeks restoration
22 of the following usurious charges: usurious late fees under section 6 of the SRA ranging from
23 2.5% to 3.5% assessed on late payments received 1 to 30 days or 31 to 60 days, respectively,
24 following maturity on such payments, in addition to all such charges paid under the Forbearance
25 Agreement and the additional forfeiture penalty of 3% assessed thereunder. Dasagroup has paid
26 several of these charges in an amount that has yet to be finally determined for trial, and Jefferies
27 and Silo are not entitled to keep any such portion of such usurious charges in accordance with
28 applicable law.

88. In addition, Jefferies and Silo also received money paid by Dasagroup under
duress and under protest, as described in greater detail above, under the terms of the Supplier

1 Receivable Sales Agreement, Silo Instant Pay Program, and/or subsequent Forbearance
2 Agreement between Jefferies and Dasagroup.

3 89. These funds were of use to Dasagroup (and would not have been paid but for their
4 charge), and Plaintiff Jeffries benefitted from the receipt of these payments, which included
5 payment of unlawful late fees and other penalties.

6 90. Under principles of equity and good conscience, Plaintiff should not be permitted
7 to keep these payments, which should be restored to Defendant/Counterclaimant in an amount to
8 be determined at trial.

9 WHEREFORE, Counterclaimant prays for relief as set forth below.

10 **FIFTH CLAIM**
11 **Unfair/Unlawful/Fraudulent Business Practices**
12 **(Counterclaim Against Silo Technologies)**

13 91. Defendant/Counterclaimant re-alleges and incorporates by reference the
14 allegations contained in this Counterclaim and Cross-Claim as though fully set forth herein and
15 incorporates them as though fully set forth herein.

16 92. California's unfair Competition Law ("UCL"), as codified in California Business
17 & Professions Code § 17200 *et seq.* Prohibits "any unlawful, unfair or fraudulent business act or
18 practice." Cal. Bus. & Prof. Code § 17200.

19 **Unlawful**

20 93. Plaintiff Jefferies and Silo have participated with, aided and abetted, acted as
21 agents of, or conspired with other persons to commit the following unlawful acts:

22 a. charging unlawful charges and late fees under the Instant Pay Program
23 (and the subsequent Forbearance Agreement) in violation of Civil Code § 1671(b), which
24 charges were not reasonable under the circumstances existing at the time the contract was made;

25 b. charging usurious charges and usurious late fees under the Instant Pay
26 Program (and the subsequent Forbearance Agreement) in violation of Cal. Const. Art. XV, §
27 1(2);
28

1 c. charging late fees and other transaction fees under the Instant Pay
2 Agreement that bear no relationship to actual costs of services and that also operate to exact a
3 forfeiture;

4 d. violating Division 9 of the California Financial Code, the California
5 Financing Law (“CFL”), which requires nonbank lenders and also brokers engaged in the
6 business of making or brokering loans to obtain a California Financing license from the
7 California Department of Financial Protection and Innovation (formerly the Department of
8 Business Oversight), including, but not limited to, Cal. Fin. Code §§ 22100(a), 22004, 22009;

9 e. violating provisions of the California’s Commercial Disclosure Law
10 (“CDL”), Cal. Fin. Code §§ 22800-22806, including, but not limited to, Cal. Fin. Code §§
11 22800(d)(1), 22800(n) and other provisions requiring non-exempt providers to provide certain
12 disclosures “at the time of extending a specific commercial financing offer” to a recipient,
13 including information about the total amount of funds provided; dollar cost of the financing; term
14 or estimated term; the method, frequency, and amount of payments; and a description of any
15 prepayment policies, *id.* § 22802(b)(1)-(5);

16 f. violating the implementing regulations for the CDL found at 10 Cal. Code
17 Regs. (“C.C.R.”) §§ 900 et seq., which include other rules of disclosure specific to the factoring
18 industry, including requirements for disclosures of finance charges, estimated annual percentage
19 rates, and limitations on the types of financing charges allowed, see, e.g., 10 C.C.R. §§ 912-913,
20 943;

21 g. violating federal Perishable Agriculture Commodities Act (“PACA”), 7
22 U.S.C. §§ 499a-499t by attempting to create a contractual security interest in proceeds of a
23 statutory trust, which action is preempted by the statutory trusts that arise under federal law upon
24 the sale of produce, which law prevails over any contrary provisions of the Uniform Commercial
25 Code and cannot be evaded by private agreement. See *Produce Pay, Inc. v. Izguerra Produce,*
26 *Inc.*, 39 F.4th 1158, 1162 (9th Cir. 2022) (“While PACA protects the interests of suppliers and
27 sellers of produce, it does not protect the interests of parties who are only lenders”); and

28 h. coercing Defendant/Counterclaimant to accept the onerous and
unenforceable terms and conditions of the Forbearance Agreement under assertions of

1 non-existent legal rights and threats of improper litigation against third parties like Dasagroup's
2 customers who have no cognizable payment obligation to Jefferies or Silo.

3 **Unfair**

4 94. Plaintiff Jefferies and Silo's conduct is unfair because it is immoral, unethical,
5 unscrupulous, oppressive, and substantially injurious. The gravity of the harm resulting from
6 their conduct pleaded above far outweighs its conceivable utility. Among other things, Plaintiff
7 Jefferies and Silo have participated with, aided and abetted, acted as agents of, or conspired with
8 other persons to commit the following unfair acts:

9 i. lending money and/or brokering loans at excessive or hidden interest rates
10 under the Silo Instant Pay Program that are unfairly high or that take advantage of vulnerable
11 borrowers like Dasagroup and other purveyors of agricultural products who are protected by
12 PACA;

13 j. charging transaction fees, late fees, and other charges under the Silo
14 Instant Pay Program that are beyond legal limits in violation of California state statutes and the
15 state usury law;

16 k. misrepresenting or concealing the true cost, fees, or terms of the Silo
17 Instant Pay Program to mislead prospective borrowers;

18 l. misrepresenting or concealing the true lending arrangements and lending
19 facilities (including the existence of silent lenders) that provide capital for the Silo Instant Pay
20 Program to mislead prospective borrowers about the lending program and Silo's anticipated
21 course of dealing in the program;

22 m. structuring the Silo Instant Pay Program in a manner intended to evade
23 California lending laws;

24 n. structuring the Silo Instant Pay Program in a manner intended to conceal
25 the true creditors extending credit under the program;

26 o. misrepresenting or concealing from borrowers the actual and potential
27 conflicts of interest of creditors and silent lenders like Jefferies who provide financing to the Silo
28 Instant Pay Program;

1 p. not providing legally required disclosures about interest rates, fees, and
2 repayment obligations under the Silo Instant Pay Program;

3 q. by charging fees, expenses, penalties and other items against Dasagroup's
4 reserve account without any transparency (which charges only contributed to Dasagroup's
5 alleged over-extended position in the eyes of Silo and Jefferies); and

6 r. structuring payment obligations, fees and charges under the terms of the
7 Silo Instant Pay Program to maximize charges to be assessed against participants in the program
8 based upon prevailing payment arrangements in the marketplace (which are known to largely
9 operate on Net 30 payment terms that will almost certainly lead foreseeable delays triggering late
10 fees to be assessed by Silo).

11 95. The gravity of the harm resulting from this conduct far outweighs any conceivable
12 utility of this conduct. There are reasonably available alternatives that would have furthered
13 Jefferies and Silo's legitimate business interests, but they chose not to pursue them in violation of
14 the UCL.

15 96. Dasagroup could not have reasonably avoided injury from this unfair conduct and
16 did not know, and had no reasonable means of learning, about the unfairness inherent in these
17 practices.

18 **Fraudulent**

19 97. Among other things, Plaintiff Jefferies and Silo have participated with, aided and
20 abetted, acted as agents of, or conspired with other persons to commit the following fraudulent
21 acts in violation of the UCL because it is likely to deceive a reasonable consumer as to the
22 following:

23 s. misrepresenting loan terms, including falsely stating the fees, charges, or
24 repayment schedule expected under the Silo Instant Pay Program and advertising the program as
25 lower cost than traditional factoring while hiding excessive fees in fine print;

26 t. promising flexibility on repayment and no acts of collection against
27 obligors in the event of non-payment;
28

1 u. misrepresenting their legal rights and security interests to Dasagroup's
2 customers with respect to non-factored receivables (and even as to customers whose invoices
3 were not even factored under the program);

4 v. structuring loans with fees charged on individual invoices to circumvent
5 California usury laws and avoid limitations on interest to be charged legal interest rate caps

6 w. misrepresenting that Silo would not "go after" a participant's customers in
7 the event of nonpayment;

8 x. misrepresenting that, in contrast to factoring, the fee structure of Silo's
9 alternative financing arrangements were not dependent on the obligor's delay in paying on the
10 receivables owed and that "heftier fees" would not be charged the "longer [customers] wait to
11 pay their invoice";

12 y. misrepresenting that, in contrast to recourse factoring, Silo's alternative
13 financing arrangements would not place a supplier "on the hook for a customer's unpaid
14 invoice";

15 z. misrepresenting that, in contrast to factoring, Silo's alternative financing
16 arrangements would allow Instant Pay participants to maintain "total control" over their client
17 communications and avoid financiers "act[ing] as a collector";

18 aa. misrepresenting that, in contrast to factoring, Silo's alternative financing
19 arrangements would allow Instant Pay participants to avoid the risk of "straining [customer]
20 relationships, "damag[ing] [their] business reputation," and "caus[ing] long term losses";

21 bb. misrepresenting that, unlike "a bank that requires collateral or forces [one]
22 to commit to a rigid contract with strict obligations," participants in Silo's alternative financing
23 arrangements "can rely on Silo to provide . . . flexibility, security, cost-effectiveness, and a range
24 of options to help . . . out of a bind";

25 cc. misrepresenting that participants in Silo's alternative financing
26 arrangements do not have to "stress over customers paying their invoice";

27 dd. misrepresenting that participants in Silo's alternative financing
28 arrangements "can bridge cash flow gaps so [they] can keep [their] business growing and
growing";

1 ee. misrepresenting that repayments to be made under the Silo Instant Pay
2 Program “are flexible”; and

3 ff. demanding payment from Dasagroup and its customers on usurious debts
4 and interest charges that are void and rescindable under California law.

5 98. As a direct and proximate result of the foregoing conduct,
6 Defendant/Counterclaimant Dasagroup has suffered injury.

7 99. Because Defendants’ conduct alleged herein was done maliciously, oppressively,
8 deliberately, and/or with intent to defraud, Plaintiff is further entitled to an award of exemplary
9 and punitive damages pursuant to California Civil Code section 3294.

10 100. Defendant/Counterclaimant brings this claim on behalf of itself and the public as
11 a private attorney general pursuant to Business and Professions Code 17204.

12 101. Pursuant to Business and Professions Code § 17203, Defendant/Counterclaimant
13 seeks from Plaintiff restitution and disgorgement of all earnings, profits, compensation, benefits,
14 and other gains wrongfully obtained by Plaintiff as a result of Plaintiff’s conduct in violation of
15 Business and Professions Code § 17200 et seq.

16 102. Defendant/Counterclaimant also seeks reasonable attorneys' fees and costs under
17 applicable law, including California Code of Civil Procedure § 1021.5.

18 103. Pursuant to Business and Professions Code § 17204, Defendant/Counterclaimant
19 seeks an order from the Court enjoining Plaintiff, and its predecessors, from continuing to
20 engage in the acts set forth in this complaint, which acts constitute violations of Business and
21 Professions Code § 17200 et seq.

22 WHEREFORE, Counterclaimant prays for relief as set forth below.

23 **PRAYER FOR RELIEF**

24 Defendant/Third-Party Claimant Kickhass prays for the following relief on this
25 Third-Party Claim:

- 26 1. For compensatory damages in an amount to be proven at trial, including economic
27 damages in the form of lost profits, lost business opportunities, diminution in the
28 value of the Dasagroup’s business, loss of goodwill, harmed business reputation,

1 impairment to Dasagroup's business relationships, and resulting costs and
2 expenses.

- 3 2. For statutory damages, restitution, disgorgement, and/or other equitable relief
4 according to proof and as the Court deems proper;
5 3. For the declaratory relief requested herein;
6 4. For exemplary or punitive damages in an amount to be proven at trial;
7 5. For prejudgment interest as permitted by law;
8 6. For costs of suit and reasonable attorneys' fees incurred herein; and
9 7. For such other relief as the Court deems just and proper.

10 **JURY DEMAND ON THIRD-PARTY COMPLAINT**

11 Defendant/Third-Party Claimant demands a trial by jury on all triable issues in this
12 Third-Party Claim.

13
14
15
16
17 Dated: March 18, 2025

Respectfully submitted,
MOYA LAW FIRM

18
19 */s/ Mario A. Moya*

20 _____
21 Mario A. Moya

22 Attorneys for Defendant/Counterclaimant
23 DASAGROUP HOLDINGS CORP.
24 d/b/a KICKHASS AVOCADOS
25
26
27
28